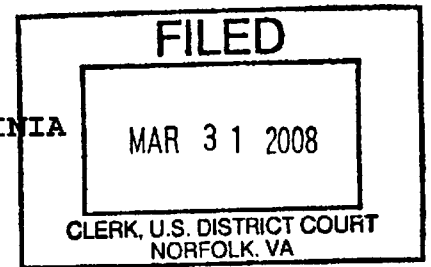


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



RICKY DONNELL NELSON, #312831,

Petitioner,

v.

ACTION NO. 2:07cv306

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on May 21, 2002, in the Circuit Court of Stafford County, Virginia, for driving after being declared a habitual offender. Petitioner was sentenced to serve five (5) years in prison, three (3) years and six (6) months of which were suspended, contingent upon good behavior for a period of twenty (20) years following his release from incarceration, for a total active sentence of one (1) year and six (6) months.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The United States Magistrate Judge's Report and Recommendation ("Magistrate

Judge's Report") was filed on March 4, 2008, denying Petitioner's motions for an evidentiary hearing and for the appointment of counsel and recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On March 14, 2008, the Court received Petitioner's Objection [sic] to the Magistrate Judge's Report ("Petitioner's Objections"). The Court received no response from Respondent.

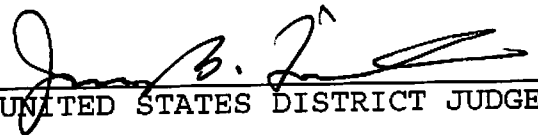
The Court, having reviewed the record and examined the objections filed by Petitioner to the Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to,¹ does hereby ADOPT AND APPROVE the findings and recommendations set forth in the Magistrate Judge's Report filed on March 4, 2008, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE as the claims are barred by the

¹The Court notes Petitioner's assertion that Respondent, and the Magistrate Judge, inaccurately reported that Petitioner had been "convicted of driving after being declared a habitual offender on at least four (4) occasions: May, 1987, December, 1988, October, 1994, and November, 1994." Petitioner's Objections, at 1-2; see also Magistrate Judge's Report, at 2 n.2 (citing Trial Transcript, at 27-35). Petitioner submitted an Order, dated November 22, 1994, purporting to establish that his convictions in October, 1994 and November, 1994 are "one in the same." Petitioner's Objections, at 2. Even assuming this assertion is correct, however, that leaves at least three (3) convictions for driving after he had been declared a habitual offender in April, 1986, prior to the instant conviction for driving after being declared a habitual offender on January 7, 2002.

statute of limitations. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.


UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

March 31, 2008